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OFFICE OF PETITIONS

In re Application of

John L. Beiswenger, et al.

Application No. 10/599,344

Filed: September 26, 2006

Attorney Docket No.: 48501-901

ON PETITION

This is a decision in response to the petition, filed September 14, 2011, to revive the above-identified application under the provisions of 37 CFR 1.137(b).

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D). The instant petition lacks item 1.

It is noted that an amendment in response to the final Office action mailed June 3, 2010, was included with the petition filed on September 14, 2011; however, the amendment is considered non-responsive, since it did not place the application in condition for allowance. See the attached Advisory Action. The proposed reply required for consideration of a petition to revive this application must be a Notice of Appeal (and appeal fee required by 37 CFR 1.17(b)), an amendment that *prima facie* places the application in condition for allowance, or the filing of a submission under 37 CFR 114 (RCE) or a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2).

Further correspondence with respect to this matter should be delivered through one of the following mediums:

By mail:

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By fax:

(571) 273-8300

ATTN: Office of Petitions

By Internet:

EFS-Web¹

Any questions concerning this matter may be directed to the undersigned at (571) 272-3204.

/SDB/

Sherry D. Brinkley Petitions Examiner Office of Petitions

Attachment: Advisory Action

¹ www.uspto.gov/ebc/efs_help.html (for help using EFS-Web call the Patent Electronic Business Center at (866) 217-9197)

Advisory Action Before the Filing of an Appeal Brief

Application No.	Applicant(s)		
10/599,344	BEISWENGER ET AL.		
Examiner	Art Unit		
Bobby Soriano	3769		

 application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Reques for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods: a) The period for reply expires 3 months from the mailing date of the final rejection. b) The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. 	Boiler and I ming of an Appear Brior	Examiner	Art Unit				
THE REPLY FILED 14 September 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Notice of Appeal To avoid abandonment of the application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Reques for Confirmed Examination (RCE) in compliance with 37 CFR 41.31; or (3) a Reques for Confirmed Examination (RCE) in compliance with 37 CFR 41.31; or (3) a Reques for Confirmed Examination (RCE) in compliance with 37 CFR 41.31; or (3) a Reques for Confirmed Examination (RCE) in compliance with 37 CFR 41.31; or (3) a Reques for Confirmed Examination (RCE) in compliance with 37 CFR 41.31; or (3) a Reques for Confirmed Examination (RCE) in compliance with 37 CFR 41.31; or (3) a Reques for Confirmed Examination (RCE) in compliance with 37 CFR 41.31; or (3) a Reques for Confirmed Examination (RCE) in compliance with 37 CFR 41.31; or (3) and the appropriate extension feel in the period for reply expire so (1) the national propriate extension feel may be obtained under 37 CFR 1.36(a). The date on which the petition under 37 CFR 1.36(a) and the appropriate extension feel wave been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension feel was been filed in the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension feel was reduced and examination and an extension feel with a confirmed and an explanation of his part and an explanation of h		Bobby Soriano	3769				
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application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2). A Notice of Appeal (with appeal fee) in compliance with 37 CFR 4.1.31; or (3) a Reques for Continued Examination (RCE) in compliance with 37 CFR 1.1.14. The reply must be filed within one of the following time periods: a) The period for reply expires 3 months from the mailing date of the final rejection. b) The period for reply expires 3 months from the mailing date of the final rejection. Examiner Note: if No. 7 is checked, check either box (6) or (5) ONLY CHECK DOX (6) OWHEN THE FIRST REPLY FILED WITHIN TV MONTHS from the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later, no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. Examiner Note: if No. 7 is checked, check either box (6) or (5) ONLY CHECK DOX (6) OWHEN THE FIRST REPLY FILED WITHIN TV MONTHS OF THE FINAL REJECTION. See IMPEP 705.07(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed in the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee have been filed in the date of purposes. If checked, they reply received by the other date of the final rejection, even if timely blee the purpose of appeal was filed on	THE REPLY FILED 14 September 2011 FAILS TO PLACE THI	S APPLICATION IN CONDITION F	OR ALLOWANCE.				
b) The period for reply expires on; (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection. Examiner Note: If box 1 is checked, check either box (a) or (b), ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TV MONTHS OF THE FINAL RELECTION. See MPEP 706 70(f). Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been flied is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) set forth in (b) above, if checked, Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed may reduce any earned patent term adjustment. See 37 CFR 1.704(b). MOTICE OF APPEAL. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(a)), to avoid dismissal of the appeal. Since Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENOMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise new issues that would require further consideration and/or search (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They raise he issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially rejected claims. NOTE:	application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time						
Examiner Note: If box 1 is obsected, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TV MONTHS OF THE FIRMAR REJECTION. See MPEP 706 07(f). Extensions of time may be obtained under 37 CFR 1.138(a). The date on which the petition under 37 CFR 1.138(a) and the appropriate extension fear have been filed is the date for purposes of determining the period of extension and the corresponding amount of the file. The appropriate extension fear the was also been filed is the date for purposes of determining the period of extension and the corresponding amount of the file. The propriate extension fear the propriate set of this (b) above, if checked, Any repty received by the Office of extension and the corresponding amount of the file. The final rejection, even if timely files may reduce any samed patent term adjustment. See 37 CFR 1.704(b). NOTICE OF APPEAL 2. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal as been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise new issues that would require further consideration and/or search (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (See 37 CFR 1.116 and 41.33(a)). 4 The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5 Applicant's reply has overcome the following rejection(s):	b) The period for reply expires on: (1) the mailing date of this A	dvisory Action, or (2) the date set forth i					
have been filed is the date for purposes of determining the period of extension and the corresponding amount of the feet. The appropriate extension feu under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed may reduce any earned patent term adjustment. See 37 CFR 1.70(b). NOTICE OF APPEAL 2. The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37(e)), to avoid dismissal of the appeal. Since Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). AMENDMENTS 3. The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) They raise new issues that would require further consideration and/or search (see NOTE below); (b) They raise the issue of new matter (see NOTE below); (c) They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: (see 37 CFR 1.116 and 41.33(a)).	Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO						
 2. ☐ The Notice of Appeal was filed on A brief in compliance with 37 CFR 41.37 (a)), to any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Sinck Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a). 3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below); (b) ☐ They raise the issue of new matter (see NOTE below); (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or (d) ☑ They present additional claims without canceling a corresponding number of finally rejected claims. NOTE: ☐ (See 37 CFR 1.116 and 41.33(a)). 4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324). 5. ☐ Applicant's reply has overcome the following rejection(s): ☐ Newly proposed or amended claim(s): ☐ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s). 7. ☑ For purposes of appeal, the proposed amendment(s): a) ☑ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: ☐ Claim(s) is (or will be) as follows: Claim(s) objected for: ☐ Claim(s) is (or Will be) as follows: Claim(s) objected for: ☐ Claim(s) objected for Deposed and sufficient reasons why the affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal, will not be entered because the affidavit or other evidence filed after the date of filing a Noti	have been filed is the date for purposes of determining the period of ex under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the set forth in (b) above, if checked. Any reply received by the Office later may reduce any earned patent term adjustment. See 37 CFR 1.704(b)	tension and the corresponding amount of shortened statutory period for reply origing than three months after the mailing date	of the fee. The appropria nally set in the final Office	ate extension fee be action; or (2) as			
(a)	 The Notice of Appeal was filed on A brief in comp filing the Notice of Appeal (37 CFR 41.37(a)), or any exter Notice of Appeal has been filed, any reply must be filed w 	nsion thereof (37 CFR 41.37(e)), to	avoid dismissal of the	s of the date of e appeal. Since a			
appeal; and/or (d)	(a) They raise new issues that would require further consideration and/or search (see NOTE below);						
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how the new or amended claims would be rejected is provided below or appended. The status of the claim(s) is (or will be) as follows: Claim(s) allowed: Claim(s) objected to: Claim(s) rejected: 10-20. Claim(s) withdrawn from consideration: 1-9. AFFIDAVIT OR OTHER EVIDENCE The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER The request for reconsideration has been considered but does NOT place the application in condition for allowance because: Whose the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). //SAM YAO/	 Newly proposed or amended claim(s) would be all non-allowable claim(s). 	lowable if submitted in a separate, t					
Claim(s) objected to: Claim(s) rejected: 10-20. Claim(s) withdrawn from consideration: 1-9. AFFIDAVIT OR OTHER EVIDENCE 8. The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). 13. Other: 14. Bobby Soriano/	how the new or amended claims would be rejected is prov The status of the claim(s) is (or will be) as follows:		be entered and an e	xplanation of			
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because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e). 9. The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1). 10. The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached. REQUEST FOR RECONSIDERATION/OTHER 11. The request for reconsideration has been considered but does NOT place the application in condition for allowance because: 12. Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s) 13. Other: /SAM YAO/ /Bobby Soriano/	AFFIDAVIT OR OTHER EVIDENCE						
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